HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1076 of 2009

JUDGMENT:

Aggrieved by the Award dated 06.01.2009 in O.P.No.3035 of 2005 passed by the Chairman, M.A.C.T-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal'), the 5th respondent/ Insurance company in the OP preferred the instant appeal.

2) The factual matrix of the case is thus:

a) On 23.04.2005 at about 9.20 pm the claimant was proceeding on a Motor Cycle bearing No. AP 28 AG 4447 and when he reached near Tirumala College, Nagarjuna Nagar Colony, Cyberabad, a Auto bearing No. AP 11 W 5392 being driven by its driver in a rash and negligent manner came in opposite direction and dashed the motor cycle of the claimant. In the resultant accident, the claimant sustained grievous injuries and incurred huge medical expenses. It is averred that the accident was occurred due to rash and negligent driving by the driver of auto. On these pleas, the claimant filed M.V.O.P.No.3035 of 2005 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondent Nos.1 and 2, who are hirers and R.3 to 5, who are driver, owner and Insurer of the offending auto respectively and claimed Rs.9,00,000/- as compensation.

b) Respondents Nos. 1 to 4 filed common counter and opposed the claim denying all the material averments made in the petition and urged to put the claimant in strict proof of the same. It is averred that the auto was insured with R5—Insurance Company and it has to indemnify the liability of R1, if any. They further contended that claim is highly excessive and exorbitant and thus prayed for dismissal of OP.

c) Respondent No.5/Insurance Company filed counter and opposed the claim denying all the material averments made in the petition and urged to put the claimant in strict proof of the same. It contended that there was no negligence on the part of the driver of the auto and the claimant himself was responsible for the accident. It further contended that there was no valid and effective driving license to the driver of crime vehicle by the date of accident and hence, the Insurance company was not liable to pay any compensation. Finally, R.5 contended that the compensation claimed by the claimant was high and excessive and thus prayed to dismiss the O.P.

d) During trial, PWs.1 to 6 were examined and Exs.A.1 to A.40 and EXs. X.1 and X.2 were marked on behalf of claimant. On behalf of respondents, RWs. 1 to 3 were examined and Exs. B.1 to B.3 were marked.

e) The Tribunal on appreciation of both oral and documentary evidence, awarded Rs.6,20,000/- as compensation with proportionate costs and interest @ 7.5% p.a. under different heads as below:

Loss of dependency		Rs. 4,90,000-00
Medical Expenditure		Rs. 1,00,000-00
Pain and suffering		Rs. 30,000-00
	Total	Rs. 6,20,000-00

However, the Tribunal granted only Rs.5,58,000/- to the claimant after deducting Rs.62,000/- towards 10% contributory negligence fixed on claimant.

Hence, the appeal by Insurance Company.

3) The parties in the appeal are referred as they are arrayed before the Tribunal.

4) Heard arguments of Sri B. Naresh, learned counsel for appellant/Insurance Company and Sri J. Sreenivasa Rao, learned counsel for respondent Nos. 1 and Sri S. Ravindranath, learned counsel for respondent Nos.2,3 and 5. Notice sent on R.4 was served, but there is no representation on his behalf.

5 a) Challenging the award, learned counsel for appellant/insurance company firstly argued that R.4, who is the driver of the crime vehicle, had no valid and effective driving license by the date of accident but he obtained LMV Non Transport License on 6.10.2005 i.e., long after the accident took place on 23.04.2005. The owner and hirers have knowingly allowed him to drive the vehicle and breached the policy and hence, the tribunal ought to have exonerated the insurance company from its liability, but it erroneously fixed

liability on the insurance company.

b) Secondly, he argued that the Tribunal having found that the claimant drove the vehicle under the influence of Alcohol, ought to have fixed his contributory negligence at 50%, but instead, it fixed a low figure of 10%.

c) Thirdly, learned counsel argued that the Tribunal committed error in accepting the salary of the claimant as Rs.6,000/- per month without there being any cogent evidence in this regard and thereby compensation for loss of income due to disability was unduly escalated.

He, thus, prayed to allow the appeal and exonerate the insurance company from its liability or alternatively re-assess the compensation suitably.

6a) Per contra, learned counsel for respondents firstly contended that though the driver obtained license with effect from 6.10.2005, the Tribunal found that he was possessing LLR by the date of accident and thereby negatived the contention of insurance company and hence the same contention is not maintainable now.

b) Secondly, learned counsel argued that except finding alcohol in the stomach of the claimant, concerned doctor did not mention the percentage of Alcohol to know whether the claimant was deprived of his senses to drive the vehicle and hence, the Tribunal has reasonably fixed his liability at 10% and the said finding need not be reviewed.

c) Thirdly, he argued that compensation fixed under different heads was just and reasonable and the same does not merit for review and prayed for dismissal of the appeal.

7) In the light of above rival arguments, the point for determination is:

"Whether the compensation awarded by the Tribunal is factually and legally sustainable?"

8) **POINT**: Accident, involvement of the Motor Cycle bearing No. AP 28 AG 4447 and the auto bearing No. AP 11 W 5392 and the claimant suffering injuries etc., are admitted facts. The first contention raised by the appellant/insurance company is in respect of lack of driving license by the driver at the time of accident and consequent breach of the policy. In this regard, the insurance company examined RW.1 and produced Ex.X.2= Ex.B.3--Driving License Extract of 4th respondent. It shows that he was given LMV Non Transport license with effect from 6.10.2015 and LMV Transport License with effect from 20.11.2006. The Accident was occurred on 23.04.2005. Thus, it is clear that he had no valid and effecting driving license by the date of accident. In the cross examination of RW.1 who is Senior Assistant in RTA Office, Secunderabad, it was elicited that he did not produce learning license particulars. However, he denied the suggestion that there was

a valid LLR to the driver even prior to 6.10.2005 and more particularly as on the date of accident i.e., 23.04.2005. If it is the case of respondents that driver had valid LLR by the date of accident, nothing prevented them to produce in the Court. It must be noted that the driver contested in the OP and filed Counter. As such, he was in a position to produce his driving license for the verification of the Court, but he did not do so. Therefore, from the conduct of the respondents, it is clear that the driver had no valid driving license by the date of accident. It is not the case of other respondents that without knowing this fact they engaged him. In these circumstances, as rightly contended by the learned counsel for appellant/Insurance company, the insurance company deserves to be exonerated from its liability. However, it is apposite to decide the other contentions raised by the parties also.

9. The next contention of the appellant is that the claimant was in a drunken state and so the Tribunal ought to have fixed his liability at 50%. In respect of this contention, Rw.3--Causality Medical Officer of Gandhi Hospital, Secunderabad, deposed that he issued Ex.B.2—Extract of Accident Register of Gandhi Hospital, wherein he mentioned that patient consumed Alcohol. He stated that he made the said observation in Ex.B.2 after examining the claimant on 23.04.2005, who was brought by the auto driver. He stated that he found the claimant consumed Alcohol since the breathe was smelling Alcohol. In the cross examination, he

stated that no blood test was conducted and he cannot say whether the claimant met with accident under the influence of Alcohol. He admitted that he did not mention the percentage of Alcohol consumed by the claimant. So, the evidence of Rw.3 coupled with Ex.B.2 could only show that claimant was smelling Alcohol by the time he was brought to Gandhi Hospital and it was not known how much of Alcohol was consumed by him and what was the percentage of the presence of Alcohol in his blood since no blood test was conducted. In these circumstances, for lack of sufficient evidence on this aspect, the Tribunal fixed the liability of the claimant as 10%. In the similar circumstances in ***G. Ramulu @ Venkat Ramulu V. Managing Director, APSRTC, Musheerabad, Hyderabad and another***[1], cited by the learned counsel respondents, a learned Judge of this Court observed that it was not mentioned as to what is the actual extent of alcohol in the blood and whether it exceeded the permissible limit of 30 Mg. per 100 litre of blood so as to make the appellant incapable of exercising proper control over the vehicle as contemplated under Section 185 of M.V.Act and accordingly, remanded the matter to the lower Tribunal for fresh adjudication. In the instant case, as stated supra, the Tribunal for want of proper evidence fixed a reasonable percentage of liability on the claimant and hence, the same cannot be found fault.

10. The next contention of the appellant is that the Tribunal

erred in fixing the monthly income of claimant at Rs.6,000/-. A perusal of the judgment shows that the Tribunal basing on Exs. A.26 and 27 fixed the said amount. Ex.A.26 is the Pan Card and Ex.A.27 is the Cover Letter of IT Department for issuance of Ex. A.26 to the claimant. It is true that Exs.A.26 and 27 will only show that the claimant possessed Pan Card but they will not speak of his income. However, the claimant examined PW.6, who is working as Purchase Assistant in Gold Stone Infratec Limited. He stated that the claimant used to purchase waste Card Board Boxes and other scrap material from them during 2001—2005 and he used to purchase the material worth of Rs.30,000/- per month. In the cross examination, he stated that he did not produce any ledger in proof of his statement. Though there is no proof for the exact worth of the material purchased by the claimant, still his evidence would show that the claimant was engaged in scrap business. Further, he is a Pan Card Holder. Having regard to these facts, in my considered view, the Tribunal was right in fixing his monthly income at Rs.6000/- per month. This Point is answered accordingly.

11) In the result, this MACMA is ordered as follows:

1) This MACMA is allowed and the appellant/insurance Company is exonerated from its liability.

2) Respondent Nos. 1 to 4 in the OP are directed to pay compensation to the claimant.

3) If the appellant/Insurance Company has already paid any compensation, it shall recover the same from

the respondent Nos. 1 to 4 in the OP. No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 28.10.2015

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HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1076 of 2009

Dt. 28.10.2015

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[1] 2011(1) ALD 340